

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1724

Introduced by Assembly Member Frazier

February 14, 2014

~~An act to amend Section 91.5 of the Streets and Highways Code, relating to highways. An act to add Chapter 6.7 (commencing with Section 6970) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, as amended, Frazier. ~~State highways: litter control. Construction Manager/General Contractor method: regional transportation agencies.~~

Existing law generally sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by local agencies for public works contracts. Existing law authorizes the Department of Transportation, the Santa Clara County Valley Transportation Authority, and the San Mateo County Transit District to use the Construction Manager/General Contractor project delivery method for transit projects within their respective jurisdictions, subject to certain conditions and requirements.

This bill would authorize regional transportation agencies, as defined, to use the Construction Manager/General Contractor project delivery method, as specified, to design and construct certain projects. The bill would require a regional transportation agency, within 180 days after the completion of any project using the Construction Manager/General Contractor project delivery method, to prepare a report that describes each project and provides relevant data, as specified. The bill would

also require that report to be posted on the regional transportation agency's Internet Web site, and would require the agency to notify the Chair of the Assembly Committee on Transportation and the Chair of the Senate Committee on Transportation and Housing that the report is available online.

The bill would further require a regional transportation agency using the Construction Manager/General Contractor project delivery method to comply with certain prevailing wage provisions and to reimburse the Department of Industrial Relations for its reasonable and related enforcement costs, as specified. By requiring these reimbursements to be deposited into the State Public Works Enforcement Fund, a continuously appropriated fund, the bill would make an appropriation.

~~Existing law authorizes the Department of Transportation to enter into an agreement to accept funds, materials, equipment, or services from any person for maintenance of a section of state highway, including, cleanup or abatement of litter, and to post a courtesy sign in that regard.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.7 (commencing with Section 6970) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3
4 CHAPTER 6.7. CONSTRUCTION MANAGER/GENERAL
5 CONTRACTOR METHOD: REGIONAL TRANSPORTATION AGENCIES

6
7 6970. For purposes of this chapter, the following definitions
8 apply:

9 (a) "Construction manager" means a partnership, corporation,
10 or other legal entity that is able to provide appropriately licensed
11 contracting and engineering services as needed pursuant to a
12 Construction Manager/General Contractor method contract.

13 (b) "Construction Manager/General Contractor method" means
14 a project delivery method in which a construction manager is
15 procured to provide preconstruction services during the design
16 phase of the project and construction services during the
17 construction phase of the project. The contract for construction

1 *services may be entered into at the same time as the contract for*
2 *preconstruction services, or at a later time. The execution of the*
3 *design and the construction of the project may be in sequential*
4 *phases or concurrent phases.*

5 *(c) "Department" means the Department of Transportation as*
6 *established under Part 5 (commencing with Section 14000) of*
7 *Division 3 of the Government Code.*

8 *(d) "Preconstruction services" means advice during the design*
9 *phase including, but not limited to, scheduling, pricing, and*
10 *phasing to assist the regional transportation agency to design a*
11 *more constructible project.*

12 *(e) "Project" means the construction of a highway, bridge,*
13 *expressway, or tunnel.*

14 *(f) "Regional transportation agency" means any of the*
15 *following:*

16 *(1) A transportation planning agency described in Section 29532*
17 *or 29532.1 of the Government Code.*

18 *(2) A county transportation commission established under*
19 *Section 130050, 130050.1, or 130050.2 of the Public Utilities*
20 *Code.*

21 *(3) Any other local or regional transportation entity that is*
22 *designated by statute as a regional transportation agency.*

23 *(4) A local transportation authority designated pursuant to*
24 *Division 12.5 (commencing with Section 131000) or Division 19*
25 *(commencing with Section 180000) of the Public Utilities Code.*

26 *(5) The Santa Clara Valley Transportation Authority established*
27 *pursuant to Part 12 (commencing with Section 100000) of Division*
28 *10 of the Public Utilities Code.*

29 *6974. (a) The Construction Manager/General Contractor*
30 *method may be used by a regional transportation agency pursuant*
31 *to this chapter if, after evaluation of the traditional*
32 *design-bid-build process of construction and of the Construction*
33 *Manager/General Contractor method in a public meeting, the*
34 *regional transportation agency makes a written finding that use*
35 *of the Construction Manager/General Contractor method on the*
36 *specific project under consideration will accomplish one or more*
37 *of the following objectives: reduce project costs, expedite the*
38 *project's completion, or provide features not achievable through*
39 *the design-bid-build method. This finding shall be made prior to*

1 *the regional transportation agency entering into a Construction*
2 *Manager/General Contractor method contract.*

3 *(b) Except as specified in subdivision (c), the regional*
4 *transportation agency shall comply with subdivision (f) of Section*
5 *1771.5 of the Labor Code, and shall reimburse the Department of*
6 *Industrial Relations for its reasonable and directly related costs*
7 *of performing prevailing wage monitoring and enforcement on*
8 *public works projects pursuant to rates established by the*
9 *department as set forth in subdivision (h) of Section 1771.5 of the*
10 *Labor Code on projects using the Construction Manager/General*
11 *Contractor method under this chapter. All moneys collected*
12 *pursuant to this subdivision shall be deposited in the State Public*
13 *Works Enforcement Fund, created by Section 1771.3 of the Labor*
14 *Code, and shall be used only for enforcement of prevailing wage*
15 *requirements on those projects.*

16 *(c) In lieu of complying with subdivision (a), the regional*
17 *transportation agency may elect to enter into a collective*
18 *bargaining agreement that binds all of the contractors performing*
19 *work on the project and that includes a mechanism for resolving*
20 *disputes about the payment of wages.*

21 *(d) (1) Within 180 days after the completion of a project using*
22 *the Construction Manager/General Contractor method, the*
23 *regional transportation agency shall prepare a report including*
24 *all of the following:*

25 *(A) Data on initial cost estimates, actual cost upon completion,*
26 *and the reasons for any difference.*

27 *(B) Estimated time for completion, actual time of completion,*
28 *and the reasons for any difference.*

29 *(C) The number and dollar value of any change orders for all*
30 *projects completed using the Construction Manager/General*
31 *Contractor method.*

32 *(2) A report required by this subdivision shall be posted on the*
33 *regional transportation agency's Internet Web site. The regional*
34 *transportation agency shall notify the Chair of the Assembly*
35 *Committee on Transportation and the Chair of the Senate*
36 *Committee on Transportation and Housing that the report is*
37 *available online.*

38 *6976. A Construction Manager/General Contractor method*
39 *project shall progress as follows:*

1 (a) A regional transportation agency that intends to use the
2 Construction Manager/General Contractor method shall adopt a
3 procedure for the evaluation and selection of a construction
4 manager in a public meeting. The procedure shall include a
5 two-phased request for qualifications (RFQ). Under Phase 1 of
6 the RFQ, the Construction Manager (CM) is identified using a
7 qualifications-based selection process. In Phase 2 of the RFQ, the
8 CM transitions to the General Contractor (GC) who completes
9 the work under either a fixed price or guaranteed maximum price.

10 (b) The procedures adopted by the regional transportation
11 agency shall include, at a minimum, all of the following:

12 (1) The criteria for membership in its selection panel.

13 (2) The evaluation criteria and relative weighting of the
14 evaluation criteria for scoring and ranking the construction
15 manager qualifications.

16 (3) If the regional transportation agency intends to establish a
17 preliminary list of the highest qualified firms who will be
18 subsequently interviewed prior to ranking the final list, the
19 evaluation criteria and relative weighting of the evaluation criteria
20 for scoring and ranking the construction manager interviews and
21 the method used to rank the final list using a combination of RFQ
22 and interview criteria.

23 (4) The minimum number, if any, of proposers who must respond
24 to the regional transportation agencies RFQ for the agency to use
25 the Construction Manager/General Contractor method.

26 (5) The maximum number, if any, of construction manager firms
27 who will be deemed qualified to continue to the interview phase,
28 if used, or to the negotiations.

29 (6) The process by which it will use an independent cost
30 estimator (ICE) as part of its negotiation for fixed price or
31 guaranteed maximum price construction services contract.

32 (7) Any specific subcontracting requirements deemed necessary
33 by the regional transportation agency in addition to that required
34 by existing statutes.

35 (c) (1) For each RFQ, the regional transportation agency shall
36 establish a selection panel to evaluate and rank proposals. A
37 person who is a member of the selection panel shall not be a
38 contractor under the contract or provide construction services,
39 materials, or other services under the contract. The regional
40 transportation agency shall generate a final list of qualified

1 *persons or firms that participated in the RFQ prior to entering*
2 *into negotiations on the contract or contracts to which the RFQ*
3 *applies.*

4 *(2) The regional transportation agency and its selection panel*
5 *shall not request or consider fees, price, man-hours, or any other*
6 *cost information in its evaluation and ranking of proposals and*
7 *establishment of the final list for that contract.*

8 *(d) (1) For each RFQ, the regional transportation agency shall*
9 *enter into separate negotiations for the contract with the highest*
10 *qualified person or firm on the final list for that contract. However,*
11 *if the RFQ is for multiple contracts and specifies that all of the*
12 *multiple contracts will be awarded to a single construction*
13 *manager, there may be a single negotiation for all of the multiple*
14 *contracts. The negotiations shall include consideration of*
15 *compensation and other contract terms that the regional*
16 *transportation agency determines to be fair and reasonable to the*
17 *regional transportation agency. In making this decision, the*
18 *regional transportation agency shall take into account the*
19 *estimated value, the scope, the complexity, and the nature of the*
20 *professional services or construction services to be rendered. If*
21 *the regional transportation agency is not able to negotiate a*
22 *satisfactory contract with the highest qualified person or firm on*
23 *the final list, regarding compensation and on other contract terms*
24 *the regional transportation agency determines to be fair and*
25 *reasonable, the regional transportation agency shall formally*
26 *terminate negotiations with that person or firm. The regional*
27 *transportation agency may undertake negotiations with the next*
28 *most qualified person or firm on the final list in sequence until an*
29 *agreement is reached or a determination is made to reject all*
30 *persons or firms on the final list.*

31 *(2) If a contract for construction services is entered into*
32 *pursuant to this chapter and includes preconstruction services by*
33 *the construction manager, the regional transportation agency shall*
34 *enter into a written contract with the construction manager for*
35 *preconstruction services under which contract the regional*
36 *transportation agency shall pay the construction manager a fee*
37 *for preconstruction services in an amount agreed upon by the*
38 *regional transportation agency and the construction manager.*
39 *The preconstruction services contract may include fees for services*
40 *to be performed during the contract period provided, however,*

1 *the regional transportation agency shall not request or obtain a*
2 *fixed price or a guaranteed maximum price for the construction*
3 *contract from the construction manager or enter into a construction*
4 *contract with the construction manager until after the regional*
5 *transportation agency has entered into a services contract. A*
6 *preconstruction services contract shall provide for the subsequent*
7 *negotiation for construction of all or any discrete phase or phases*
8 *of the project.*

9 *(3) A contract for construction services shall be awarded after*
10 *the plans have been sufficiently developed and either a fixed price*
11 *or a guaranteed maximum price has been successfully negotiated.*
12 *In the event that a fixed price or a guaranteed maximum price is*
13 *not negotiated, the regional transportation agency shall not award*
14 *the contract for construction services.*

15 *(4) The regional transportation agency is not required to award*
16 *the construction services contract.*

17 *(5) Construction shall not commence on any phase, package,*
18 *or element until the regional transportation agency and*
19 *construction manager agree in writing on either a fixed price that*
20 *the regional transportation agency will pay for the construction*
21 *to be commenced or a guaranteed maximum price for the*
22 *construction to be commenced and construction schedule for the*
23 *project. The construction manager shall perform not less than 30*
24 *percent of the work covered by the fixed price or guaranteed*
25 *maximum price agreement reached. Work that is not performed*
26 *directly by the construction manager shall be bid to subcontractors*
27 *pursuant to Section 6705.*

28 *(e) In the event the regional transportation agency and the*
29 *construction manager cannot successfully negotiate a fixed price*
30 *or guaranteed maximum price contract, the regional transportation*
31 *agency shall be able to, at its sole discretion, publicly advertise*
32 *and award the construction contract using the plans and*
33 *specifications developed with the preconstruction services provided*
34 *by construction manager input. The construction manager shall*
35 *not be excluded from submitting a bid on this type of contract.*

36 *6978. All subcontractors bidding on contracts pursuant to this*
37 *chapter shall be afforded the protections contained in Chapter 4*
38 *(commencing with Section 4100). The construction manager shall*
39 *do all of the following:*

1 (a) Provide public notice of the availability of work to be
2 subcontracted in accordance with the publication requirements
3 applicable to the competitive bidding process of the regional
4 transportation agency.

5 (b) Provide a fixed date and time on which the subcontracted
6 work will be awarded in accordance with the procedure established
7 pursuant to this chapter.

8 (c) Comply with any subcontracting procedures adopted by the
9 regional transportation agency that were included in the regional
10 transportation agency's RFQ. If the regional transportation agency
11 has adopted procedures to prequalify public works contractors,
12 the construction manager may use the procedures to prequalify
13 subcontractors.

14 6980. Contracts awarded pursuant to this chapter shall be
15 valid until the project is completed.

16 6982. Nothing in this chapter is intended to affect, expand,
17 alter, or limit any rights or remedies otherwise available at law.

18 SECTION 1. ~~Section 91.5 of the Streets and Highways Code~~
19 ~~is amended to read:~~

20 91.5. (a) ~~The department may enter into an agreement to accept~~
21 ~~funds, materials, equipment, or services from any person for~~
22 ~~maintenance or roadside enhancement, including the cleanup and~~
23 ~~abatement of litter, of a section of a state highway. The department~~
24 ~~and the sponsoring person may specify in the agreement the level~~
25 ~~of maintenance that will be performed.~~

26 (b) ~~The director may authorize a courtesy sign. The courtesy~~
27 ~~signs shall be consistent with existing code provisions and~~
28 ~~department rules and regulations concerning those signs.~~